

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Petitioner,

- against -

20-MC-256 (EK)

CITY OF NEW YORK and CYNTHIA
BRANN, COMMISSIONER OF THE NEW
YORK CITY DEPARTMENT OF
CORRECTION,

Respondents.
----- X

**MEMORANDUM OF LAW IN SUPPORT OF CITY RESPONDENTS'
MOTION TO DISMISS FOR MOOTNESS**

PRELIMINARY STATEMENT

Petitioner, the United States of America, brings this action to enforce ICE administrative subpoena No. ERO-ENF-NYC-202000005 seeking documents related to an investigation of Romero Ramirez-Macias, issued pursuant to 8 U.S.C. § 1225(d)(4) and 8 C.F.R. § 287.4(c), for violations of the Immigration and Nationality Act (“INA”).

Respondents, City of New York and Cynthia Brann, Commissioner of the New York City Department of Correction (“City respondents”) respectfully submit this memorandum of law in support of their motion to dismiss the petition to enforce ICE administrative subpoena No. ERO-ENF-NYC-202000005 and the Order to Show Cause on the ground that petitioner’s request is moot as Respondents have provided documents in its possession responsive to the subpoena.

STATEMENT OF FACTS

For a full and complete statement of the facts, City Respondents respectfully refer the Court to the Declaration by Kimberly M. Joyce, Senior Counsel for the New York City, dated February 18, 2020 (“Joyce Decl.”), submitted herewith.

On or about January 17, 2020 City Respondent Commissioner Brann was served with four ICE subpoenas, including No. ERO-ENF-NYC-202000005, for documents related to an individual named Romero Ramirez-Macias. See Ramirez-Macias subpoena, annexed as Ex. A to the Joyce Decl. On January 31, 2020, City Respondents wrote to Thomas Decker, New York Field Office Director for U.S. Immigration and Customs Enforcements Enforcement and Removal Options, voicing serious concerns based on public statements of the current Presidential administration that the subpoenas were issued in bad faith, and seeking information and assurances that the subpoenas were in fact issued in good faith and for a legitimate investigative purpose. See Joyce Decl. ¶ 4.

Instead of engaging in discussion or negotiation, the United States Attorney’s Office for the Eastern District of New York filed motions to enforce two of the four subpoenas, and seeking an order to show cause. See Joyce Decl. ¶ 6. On February 4, 2020, this Court endorsed the Order to Show Cause, ordering that Respondents’ response to the petition be due by February 18, 2020, and petitioner’s reply, if any, due by February 25, 2020. See Joyce Decl. ¶ 7.

On February 18, 2020, Respondents provided responsive documents and information in its possession in this matter, to Joseph A. Marutollo, Chief of Immigration Litigation, and Deputy Chief of the Civil Division with the United States Attorney’s Office for the Eastern District of New York, by both email and mail. See Joyce Decl. ¶ 8.

ARGUMENT

**PETITIONERS' PETITION AND
OTSC SHOULD BE DISMISSED
BASED ON MOOTNESS**

As set forth above and in the accompanying Joyce Declaration, Respondents have provided responsive documents and information in their custody in this matter. The Second Circuit has made clear that “[u]nder the mootness doctrine, if an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party, we must dismiss the case.” See *In re Quest Ventures, Ltd.*, F. App'x , No. 18-3024, 2020 U.S. App. LEXIS 1861, 2020 WL 363621 (2d Cir. Jan 22, 2020) (summary order).

Here, Petitioner's petition for enforcement of the subpoena related to Romero Ramirez-Macias, and the Order to Show Cause, should be dismissed based on mootness, as Respondents have provided responsive documents and information in its custody in this matter.

CONCLUSION

For the reasons set forth above, City Respondents respectfully request that the petition and order to show cause be dismissed for mootness as Respondents have provided responsive documents and information in its custody in this matter.

Dated: New York, New York
February 18, 2020

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